

LAFCO Meeting: **October 5, 2011**
TO: LAFCO
FROM: Neelima Palacherla, Executive Officer
 Mala Subramanian, LAFCO Counsel
SUBJECT: **SARATOGA FIRE PROTECTION DISTRICT**

STAFF RECOMMENDATION

1. Direct staff to prepare a work plan for the potential dissolution of the Saratoga Fire Protection District and annexation of its territory to the Santa Clara County Central Fire Protection District under the current process which may require an election, and hire a consultant to conduct a special study to prepare a detailed analysis of the cost savings and fiscal impacts.

BACKGROUND AND ANALYSIS

On December 15, 2010, LAFCO adopted the 2010 Countywide Fire Service Review which indicated that approximately \$118,000 in annual administrative costs could be reduced by dissolving the Saratoga Fire Protection District (SFD) and annexing its territory to the Santa Clara County Central Fire Protection District (CCFD). At that meeting, LAFCO also directed staff to pursue further research / analysis of this option and report back to the Commission. Staff has been in the process of preparing information on the dissolution process and meeting with the various affected agencies including the County of Santa Clara and the CCFD. Staff met with the chairperson of the SFD in June 2011 to discuss this issue.

In early August, AB 912 was signed into law by the Governor and effective January 1, 2012, would allow for a more streamlined approach to dissolutions by eliminating requirements for election. Soon after, we received correspondence from the SFD's Counsel expressing the SFD's strong opposition to its dissolution and alleging that LAFCO cannot utilize AB 912 to dissolve the SFD. (See Attachment A for the letter)

Upon further review and research into the bill, we believe that a strong argument can be made that AB 912 only applies to dissolutions and therefore, should not be utilized by LAFCO for proposals which involve dissolution of a district followed by annexation to another district.

The Commission however, may choose to proceed with initiation of the dissolution under the regular LAFCO process, which may require an election.

The following is a summary of key steps necessary in a LAFCO initiated dissolution of a district with concurrent annexation to another district.

LAFCO Initiation & Determinations

Dissolution may be initiated by a petition of landowners or voters, by a district, or by LAFCO. LAFCO may initiate a dissolution or a reorganization which includes a dissolution only if the proposal is consistent with a conclusion or recommendation in the service review, sphere of influence update or special study and the Commission makes both of the following determinations required in Government Code § 56881. [GC §56375(a)(2)(F) & (a)(3)]:

1. Public service costs of the proposal is likely to be less than or substantially similar to the costs of alternative means of providing the service.
2. The proposal promotes public access and accountability for community services needs and financial resources.

While the 2010 Countywide Fire Service Review contained information regarding this issue and concluded that the dissolution of the SFD and annexation to the CCFD would result in annual administrative cost savings in the amount of \$118,000, additional analysis is required to verify the data, address issues regarding the district's assets and liabilities in detail, and make the necessary findings. A detailed analysis of the cost savings and fiscal impacts will require review of the agencies' financial statements and audits by an independent expert. Staff recommends that LAFCO retain an independent financial consultant to prepare this analysis. It is anticipated that the cost could be approximately \$10,000, and should not exceed \$15,000 for such review, analysis and report / statement.

Property Tax Exchange

For jurisdictional changes that would affect one or more special districts, pursuant to Revenue and Tax Code §99(b)(5), the County Board of Supervisors are required to establish the amount of property tax transfer between the affected special districts. Because this proposal involves the dissolution of SFD and annexation of its territory to CCFD, the key decision would be to establish how much property tax allocation CCFD should receive. CCFD, upon taking over the service responsibility from SFD, is expected to receive the same portion of the 1% tax allocation as SFD was receiving and it is expected that no other agency would be affected by this transfer.

LAFCO Public Hearing and Protest Proceeding

LAFCO is required to hold a public hearing and provide appropriate notice on the proposed dissolution / reorganization proposal. At the hearing, LAFCO may approve, deny or approve with terms and conditions and set a date for holding a protest proceeding in the affected territory. Based on the level of written protest received at the

protest proceeding, the proposal may be terminated, ordered without election or be subject to an election.

Election may be Required

The proposal is terminated if written protest is received from 50% or more of the voters residing in the territory. [GC §57078]

If protest is received from at least 10% of the number of landowners within the district's affected territory who also own 10% of assessed value of land within the territory or from at least 10% of registered voters in the district's affected territory, then an election is required. [GC §57113(a)(1)&(b)]

The proposal is ordered without election if it does not meet the above listed protest thresholds. [GC §56854(a)(3)]

In the case of a dissolution proposal initiated by LAFCO, AB 912 eliminates the requirement for an election – that is, the proposal is terminated if majority protest exists and the proposal is ordered without an election if majority protest does not exist.

Flow charts depicting the regular dissolution process and the AB 912 streamlined process are attached. (See Attachment B and Attachment C)

NEXT STEPS

Upon Commission direction to proceed, staff will prepare a work plan and a Draft Request for Proposals for consultants to prepare a special study focused on the potential savings and impacts of dissolution of Saratoga Fire District and annexation to CCFD.

ATTACHMENTS

Attachment A: Letter dated August 16, 2011, from Harold S. Toppel, District Counsel for the Saratoga Fire Protection District.

Attachment B: Flow Chart for LAFCO Initiated Dissolution with Concurrent Annexation

Attachment C: Flow Chart for LAFCO Initiated Dissolution under AB 912

ATKINSON • FARASYN, LLP

ATTORNEYS AT LAW

660 WEST DANA STREET

P.O. BOX 279

MOUNTAIN VIEW, CALIFORNIA 94042

TELEPHONE (650) 967-6941

FACSIMILE (650) 967-1395

REPLY TO:

HAROLD S. TOPPEL

J.M. ATKINSON (1892-1982)

L.M. FARASYN (1915-1979)

August 16, 2011

Neelima Palacherla
Executive Officer
Santa Clara County LAFCO
70 West Hedding Street
11th Floor
San Jose, CA 95110

Re: Saratoga Fire Protection District
Request for Special Notice

Dear Ms. Palacherla:

Pursuant to Government Code Section 54954.1, request is hereby made for a copy of the agenda for any regular or special meeting of the Santa Clara County Local Agency Formation Commission which contains any item pertaining to the Saratoga Fire Protection District. The copy should be mailed to the undersigned at the above address.

Very truly yours,



Harold S. Toppel

cc: Saratoga Fire District

ATKINSON • FARASYN, LLP

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Santa Clara County LAFCO
70 West Hedding Street
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San Jose, CA 95110

Re: Saratoga Fire Protection District

Dear Ms. Palacherla:

The undersigned is the District Counsel for the Saratoga Fire Protection District ("the District" or "SFD").

The District's Board of Directors has been advised by its Chairman, Joe Long, that he recently met with you, at your request. It would appear that you requested this meeting for the purpose of discussing the possible consolidation of SFD with the Santa Clara County Central Fire Protection District ("CCFD"). It is my understanding that during this meeting you referred to Assembly Bill No. 912, which amends Section 57077 of the Government Code to expand the power of LAFCO to order the dissolution of a special district without first obtaining a request for dissolution by the governing body of the district and without a vote by the residents of that district. As you probably know, AB 912 has now been passed by the Legislature and was signed into law by the governor on July 25, 2011. Since it was not enacted as an urgency measure, it will take effect on January 1, 2012.

It is unclear to the SFD Board of Directors whether your meeting with Mr. Long was simply a preliminary inquiry to determine whether the District had any interest in exploring the possibility of consolidation with CCFD, or whether this meeting was an advance, informal notice of an intention by LAFCO (or its staff) to initiate proceedings for dissolution of SFD pursuant to Section 57077, as amended by AB 912. If only an inquiry was intended, we are informed that Mr. Long stated unequivocally that SFD had no interest whatsoever in dissolving itself and consolidating with CCFD. Mr. Long further stated to you that any attempt by LAFCO to initiate a dissolution would be vigorously opposed by the District and its many supporters in the community. I should remind you that when the District went to its constituents for approval of assessments to finance construction of its new fire station, the measure received over 88% approval by the voters.

Although the District's opposition to an involuntary dissolution has been clearly communicated, we feel it is necessary to offer some additional comments on AB 912, just in case serious consideration is still being given to a LAFCO initiated dissolution of SFD. For starters, it should be noted that the Saratoga Fire District does not fit the description of a special district suitable for dissolution pursuant to AB 912. As stated by the Senate Rules Committee Office of Senate Floor Analyses, AB 912 is intended to facilitate dissolution of "identified vestigial districts that linger because no one wants to take the time to get rid of them." The SFD can hardly be classified as "vestigial." It is actively conducting its business, as it has done for the last 88 years. No desire to dissolve the District has been expressed by the SFD Board, the residents of the District, or the CCFD Board. During his recent meeting with you, Mr. Long asked what actual benefits the residents of the District would obtain from a dissolution of SFD. He received no response.

It is our understanding that LAFCO has not consulted with CCFD concerning a proposal to dissolve SFD. We assume you are aware of the fact that a dissolution is not the same thing as a consolidation and each has a different definition in the Act (compare §56030 and §56035). AB 912 only applies to dissolutions and does not give LAFCO the power to order a consolidation or merger of the special district being dissolved with any other special district or the annexation of its territory to any other district. This is consistent with the presumption inherent in AB 912 that only the "vestigial" remains are being dissolved of a special district that is no longer actively performing any governmental functions – which certainly is not the case with regard to the SFD.

Government Code Section 57077 is part of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code §§56000 et seq.) ("the Act"). A careful analysis of Section 57077, as now amended by AB 912, shows that LAFCO cannot simply adopt a resolution to dissolve a special district. Commission initiated proceedings for dissolution must be consistent with prior action of the Commission pursuant to Section 56378 [service area study], 56425 [sphere of influence], or 56430 [service review]. §57077(b). To satisfy this requirement, we assume you would be relying upon the 2010 Countywide Fire Service Review Report as constituting such "prior action." However, as you may recall, the SFD raised numerous objections to the draft Report, as set forth in a letter to LAFCO dated October 18, 2010, a copy of which is enclosed for your reference. The defects mentioned in our letter were not corrected in the final Report and we still consider that Report to be factually and legally flawed.

Since a dissolution of SFD would not be initiated by the District Board, it would necessarily be a commission-initiated proceeding governed by paragraph (b)(2) of Section 57077, which reads as follows (*italics added*):

- 2) If the dissolution is initiated by an affected local agency, *by the commission pursuant to Section 56375*, or by petition pursuant to Section 56650, order the dissolution after conducting at least one noticed public hearing, *and after conducting protest proceedings in accordance with this part*. Notwithstanding any other law, the commission shall terminate proceedings if a majority protest exists in

accordance with Section 57078. If a majority protest is not found the commission shall order the dissolution without an election.

So the starting point of a commission initiated dissolution proceeding would be Section 56375 of the Act. That Section requires adoption by the commission of a resolution of application for dissolution of a district. §56375(a)(2)(B). Subsection 56375(a)(3) would require that a dissolution proposal not only be consistent with the service review, but the commission must also make the determinations specified in Subsection 56881(b), which consist of both of the following:

- (1) Public service costs of a proposal that the commission is authorizing are likely to be less than or substantially similar to the costs of alternative means of providing the service; and
- (2) A change or organization or reorganization that is authorized by the commission promotes public access and accountability for community services needs and financial resources.

As stated in our objections to the draft service review, there is no evidence that dissolution of the District will result in any material cost savings. The District Board receives no compensation for its services and the functions now being performed by District employees would still need to be performed by a successor agency. Many of the District costs are fixed and cannot be reduced, such as debt service on its bond issue and the cost of owning and operating the newly constructed fire station.

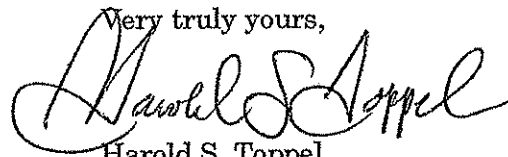
Even if the commission purports to make finding No. (1), it is difficult to see how finding No. (2) can honestly be made. The District Board is comprised of elected members who reside in the District and are readily accessible to its residents. Board meetings are conducted monthly at the fire station and each regular meeting includes financial, service, and facility reports. The District's budget is determined by the District Board which exercises direct control over the cost and level of fire protection service provided to the community. The revenue and expenses of the District are not buried in some obscure location within a massive County budget. Persons having business with the District only need to attend a meeting in the immediate neighborhood rather than travel to the County Building. The District is not engaged in any other activity besides fire protection service and its Board is directly accountable to the community. How this existing access and accountability would be improved by a dissolution of the District is a question LAFCO has utterly failed to answer. The legal burden would be upon LAFCO to set forth substantial evidence to support finding No. (2) in the resolution of application and we do not believe that such burden can lawfully be sustained.

Should the commission adopt a resolution of application, the above-quoted language of Section 57077(b)(2) requires that protest proceedings be conducted "in accordance with this part." The term "this part" refers to all of Part 4 of the Act, consisting of Sections

57000 through 57204.¹ Notice of the protest hearing must be given not less than 21 or more than 60 days prior to the hearing. §57002. Even if the number of voters in the District exceeds 1,000 (which might then permit notice to be given by publication and posting only) we believe that the serious nature of the proposal dictates that notice be given by mail to each registered voter in the District. The protest hearing must be conducted within the territorial boundaries of the District. §57008. The notice must contain all of the information required by Section 57026 of the Act, including a statement of the manner in which and by whom the dissolution proceedings were initiated and the reasons for the proposed dissolution. We believe the requirements for adequate notice would obligate the commission to set forth the legal and factual justifications for the dissolution proceedings it has elected to initiate.

Subsection 57077(b)(2) states that the dissolution proceedings must be terminated if a majority protest exists in accordance with Section 57078 of the Act, which is 50% or more of the voters residing in the territory. However, AB 912 did not amend Section 56854 of the Act, which requires the conduct of an election "notwithstanding Section 57077" if written protests are filed that meet the requirements of Section 57113 of the Act, which is 10% of the registered voters. So what is the applicable percentage for a protest? We do not think the statement "notwithstanding any other law" contained in Section 57077 resolves the issue. It can be argued that these sections can be reconciled by an interpretation that they are not mutually exclusive, especially since Section 57077 is expressly excluded from the application of Section 56854. In other words, a 10% protest under Section 56854 will mandate an election but will not terminate the proceedings, whereas a 50% protest under 57078 will terminate the proceedings. In any case, if LAFCO seeks to pursue a dissolution of SFD, this may become a legal question for a court to resolve.

We hope the objections and legal issues raised in this letter will encourage LAFCO to discontinue any further consideration of initiating proceedings for dissolution of the Saratoga Fire District. If you have any questions concerning the foregoing, please feel free to contact me.

Very truly yours,

Harold S. Toppel
District Counsel

cc: Board of Fire Commissioners
LAFCO Commissioners

¹ This language should negate the provision in Section 57000(a) that protest proceedings "not described in Section 57077" be conducted in accordance with Part 4. Consequently, all of Part 4 is applicable to dissolutions pursuant to Section 57077.



SARATOGA FIRE DISTRICT

SERVICE SINCE 1923

October 18, 2010

LAFCO of Santa Clara County
70 West Hedding Street
11th Floor, East Wing
San Jose, CA 95110

Re: Draft 2010 Countywide Fire Service Review Report

Dear Commissioners:

The Board of Fire Commissioners of the Saratoga Fire Protection District ("SFD") has reviewed the Draft 2010 Countywide Fire Service Review Report ("the Report") and we would offer the following comments with regard to the sections of the Report dealing with SFD.

The Report makes a blanket assumption, with absolutely no factual support, that a dissolution of SFD and annexation of its territory to the County Central Fire Protection District ("CCFD") "would result in reduced administrative costs and would make accountability for service more transparent." (Section 1.4.3). Elsewhere in the Report, it is stated that consolidation of SFD with CCFD would produce estimated annual savings of \$188,000, but the Report contains no discussion as to how this number was determined.

Whether or not SFD is consolidated with CCFD, certain operating and administrative costs will be incurred and we seriously question the so-called "savings" that are assumed in the Report. Moreover, we strongly dispute the claim that a consolidation will increase accountability for service. The SFD has been an integral part of the community for 87 years. When a measure was placed on the ballot for voter approval of a bond issue to finance the construction of a new fire station, it received over 88% support by the voters. Persons having business with the District Board need only attend a regular meeting at the fire station and will be given primary attention, as opposed to being an incidental item of business on the large agenda of the County Board of Supervisors. The SFD budget is a separate document, adopted by the District Board and the financial status of the District is reported to the Board at each regular monthly meeting. The notion that greater "transparency" can be achieved by having the SFD revenue and expenses buried within a massive County budget simply defies common sense.

We cannot determine from the Report whether the recommendation is for a dissolution, consolidation, annexation or other proceeding, and we understand from our legal counsel that there are differences between these terms, but one common feature seems to be that if any such proceedings are initiated by LAFCO, they would be subject to protest and if sufficient protests are filed, an election must be conducted to obtain voter approval. Please keep in mind that neither the SFD or the CCFD has expressed any interest in dissolution of SFD or a consolidation of both districts. Since CCFD is a



SARATOGA FIRE DISTRICT

SERVICE SINCE 1923

dependent district governed by the Board of Supervisors, we do not believe that consolidation is even a legal option. In any case, LAFCO will not be receiving a petition from the governing board of SFD requesting dissolution, annexation, consolidation or any other form of merger with CCFD. If LAFCO desires to pursue this course of action, it would have to be through a proceeding initiated by LAFCO, and should this occur, you can certainly expect very strong opposition from SFD. We believe that such LAFCO-initiated proceedings would also be opposed by CCFD.

In the past, concerns have been expressed over the fact that two separate districts were providing fire protection service for the City of Saratoga. With the transfer of SFD employees to CCFD and the establishment of a unified command along with a Service Agreement between SFD and CCFD, these concerns have been eliminated. However, the continued existence of SFD still provides a point of local contact and control over the cost and level of service and the availability of a governing body that can be responsive to community needs and requests regarding its fire protection service. Yet the Report completely ignores these continued benefits.

We have no objection to the establishment of a zero sphere of influence for SFD. However, it does not logically follow that because the District has no SOI it should therefore be dissolved, as suggested in Section 7.4.3 of the Report. The District has never existed for the purpose of annexing territory within an adjacent SOI; it was established to provide fire protection service within its own territory and is still serving that function 87 years later and does not require an SOI to do so.

Since the Report is only in draft form, we request that all references to the dissolution, consolidation, or annexation of SFD and its merger with CCFD be deleted from the final report.

Very truly yours,

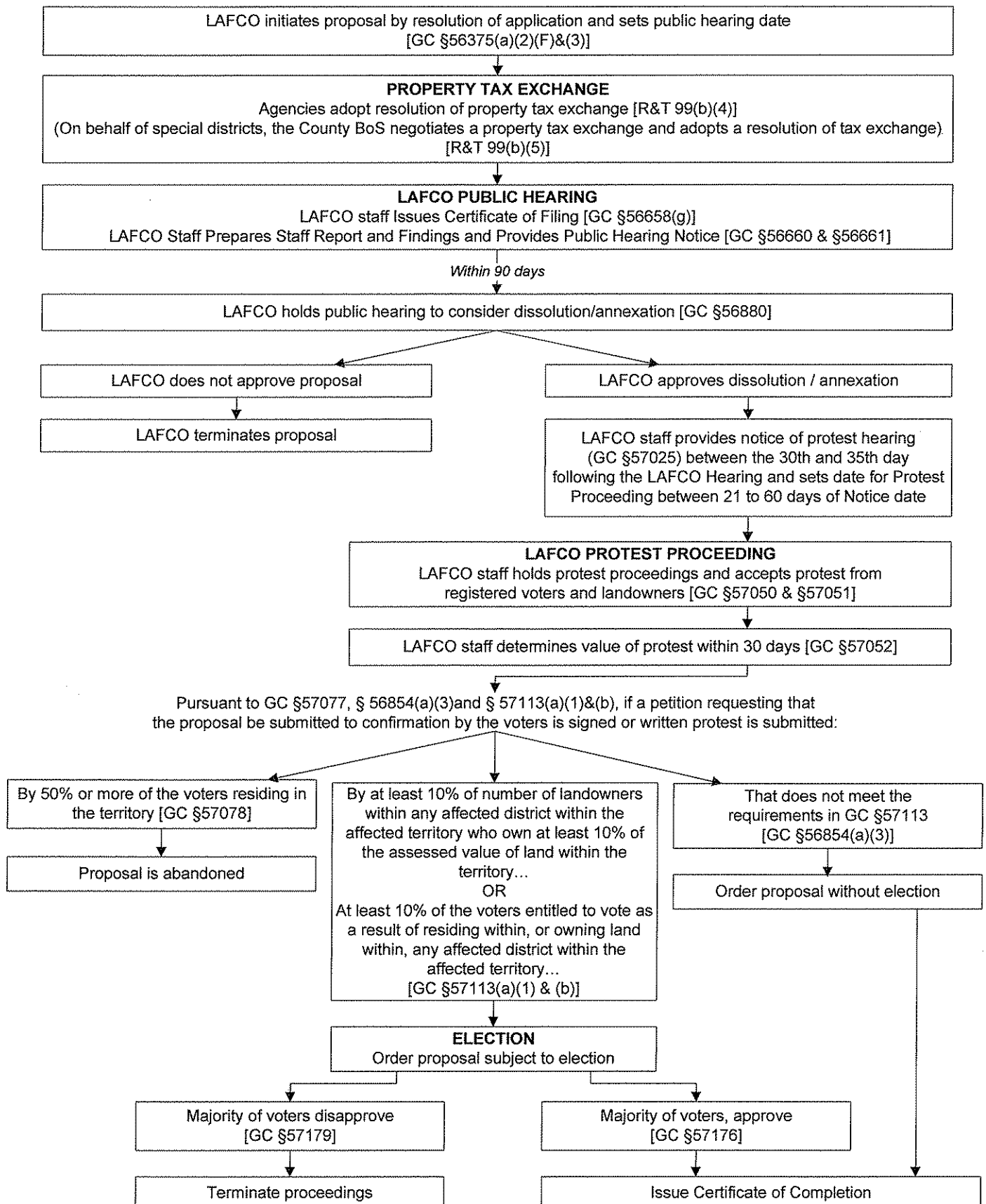
SARATOGA FIRE PROTECTION DISTRICT

By: _____

Joe Long, Chairman

cc: Board of Fire Commissioners

LAFCO-Initiated Dissolution with Concurrent Annexation
GC §56375(a) (2)(F) & (3)



AGENDA ITEM # 8
Attachment C

LAFCO-Initiated Dissolution Under AB 912
GC §56375(a) (2)(F) & (3) and §57077(b)*

*Effective January 1, 2012

